

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1659 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRAKASH NARAYAN CHAUHAN (MARATHI)

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL, Advocate for the Petitioner.

MR.U.R.BHATT, AGP,for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 01/07/96

ORAL JUDGEMENT

Petitioner Prakash Narayan Chauhan (Marathi) (hereinafter referred to as "the detenu"), by way of this petition under Article 226 of the Constitution of India, has challenged the order of detention dated 3-1-1996 passed by the Commissioner of Police, Ahmedabad City (hereinafter referred to as "the detaining authority")

under section 3 (1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as " the PASA Act").

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on eight prohibition cases filed against the detenu being CR No.299/94, 45/95, 73/95, 103/95, 138/95, 170/95, 4/95, 214/95 and 3/96 . Out of these cases, six are pending trial and two are at the investigation stage. Besides these prohibition cases, statements of four witnesses for the alleged incidents of 7-12-95 and 20-12-95 have also been relied upon by the detaining authority. In these statements allegations are made to the effect that the detenu had beaten the witnesses on the ground that they are the informants of the police and were not allowing the detenu to store the illicit liquor in their houses. Considering these materials, the detaining authority was of the view that the detenu is a " bootlegger " within the meaning of section 2 (b) of the PASA Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against him and, therefore, the impugned order is passed, which is under challenge in the present petition.

This petition is capable of being disposed of on the first submission made on behalf of the detenu by Mr. Patel. Mr. Patel pointed out that the privilege of not disclosing the identity of the witnesses under section 9 (2) of the PASA Act is not genuine as there is no verification of the statements of the witnesses either by the sponsoring authority or by the detaining authority.

Having seen the statements of the witnesses, I find that in fact there is no verification of the statements by the concerned officers. On mere reading of the grounds of detention, it is clear that the detaining authority has blindly relied on the statements of the witnesses without verifying the correctness thereof. If the facts stated in the statements by the witnesses are not verified by the detaining authority, the privilege claimed under section 9 (2) of the PASA Act of not disclosing the identity of the witnesses to the detenu is not genuine. This has, therefore, violated the constitutional guarantee under Article 22 (5) of the Constitution of India to make an effective representation. Therefore, the continued detention of the detenu has become illegal and void. The petition is therefore required to be allowed.

In the result, this petition is allowed. The impugned order of detention dated 3-1-1996 is quashed and set aside. The detenu Prakash Narayan Chauhan (Marathi) is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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